

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAMONT SCANTLING,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
DONALD T. VAUGHN,	:	
et al.,	:	
Defendants	:	NO. 03-0067

MEMORANDUM AND ORDER

McLaughlin, J.

February 12, 2004

This case is brought under 42 U.S.C. § 1983 by a pro se prisoner who alleges that the defendants failed to provide him adequate medical care. Several of the defendants have filed a motion to dismiss the claims against them. In the alternative, the moving defendants seek to have the claims against the defendants who work at State Correctional Institute-Albion ("SCI-Albion") severed and transferred to the Western District of Pennsylvania. The Court will grant in part and deny in part the motion. Defendant Baker filed a separate motion to dismiss or in the alternative to transfer. The Court will deny Baker's motion. The plaintiff has filed a Motion to Add Defendants and a Motion for Leave to File a Supplemental Complaint. The Court will deny



the motion to file a supplemental complaint, and will deny in part and grant in part the motion to add defendants.

## I. Background

The plaintiff, Lamont Scantling, recounts in great detail what happened to him at State Correctional Institute-Graterford ("SCI-Graterford") and SCI-Albion.<sup>1</sup> His basic claim is that he received inadequate medical care and was denied certain medical treatment at both SCI-Graterford and SCI-Albion in violation of his constitutional rights. He has sued numerous prison staff. He also alleges supervisory liability and retaliatory action against various prison administrators. These latter allegations center around the manner in which the plaintiff's grievances were handled.

The defendants work or worked for various entities. Defendants Donald T. Vaughn, Manuel Arroyo, Edward J. Dennis, Leslie S. Hatcher, Julie Knauer, Donald Frace, "Nurse Jim," various unknown medical staff, an unknown person who is either Deputy Superintendent of Management or Deputy Superintendent of Inmate Services, and an unknown female correctional officer work

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<sup>1</sup> In considering motions to dismiss for failure to state a claim, the Court takes all well pleaded allegations as true, construes the complaint in the light most favorable to the plaintiff, and determines whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief. Colburn v. Upper Darby Twp., 838 F.2d 633, 665 (3d Cir. 1988).



for SCI-Graterford. Defendants William A. Wolfe, Bruce T. Marquardt, Victoria L. Kormanic, William J. Barr, Maxine Overton, Susan Rebele, and various unknown medical staff work for SCI-Albion. Defendants Tshanna C. Kyler, Thomas L. James, Sharon M. Burk<sup>2</sup> and Jeffrey A. Beard do not work for any particular correctional institute, but are employed by the Pennsylvania Department of Corrections ("DOC").

At a status conference, counsel for Dr. Baker and counsel for all the other moving defendants represented that defendant doctors, Drs. Ralph Smith, Baker, and Conrad Fraider were not employees of either SCI-Graterford or SCI-Albion. Dr. Smith was an employee of the medical contractor for SCI-Graterford at the time the incidents took place. Dr. Baker is an employee of Wexford, the current medical contractor for SCI-Albion. Dr. Fraider is an independent contractor to whom SCI-Albion medical staff sometimes refers patients. Dr. Bashline is alleged to be a staff doctor at SCI-Albion.<sup>3</sup>

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<sup>2</sup> The plaintiff spells her last name "Burks." Counsel for the moving defendants other than Dr. Baker refer to her as "Burk."

<sup>3</sup> There is no record that Drs. Smith, Fraider, or any of the unknown defendants, including Nurse Jim, have been served with the complaint. Counsel for the moving defendants other than Baker, claimed that they have been unable to identify who Nurse Jim or the unknown female officer is. Defendants Beard, Burk, and Bashline were added as defendants in the amended complaint. There is no record that they have been served; however, counsel for the moving defendants other than Baker have filed a response arguing for dismissal of claims against Beard and Burk.



A. Overview of Events at SCI-Graterford

According to the amended complaint, Mr. Scantling was brought to SCI-Graterford less than two weeks after having been discharged from Frankford Hospital. His right ankle had been operated on as a result of a car accident. Three screws were placed in the ankle during this operation. He arrived at SCI-Graterford in a wheelchair, and had a non-weight bearing cast on his right foot. The plaintiff also had a set of crutches which were later stolen. He was seen by medical staff upon arriving at SCI-Graterford.

The plaintiff's medical needs were ignored or minimized in a number of ways. Dr. Smith and all other doctors at SCI-Graterford, with one exception, gave the plaintiff over-the-counter painkillers instead of the prescription painkillers a doctor at Frankford Hospital had prescribed. He was given no therapy for his foot and was transferred to a cell in an upper-tier. Dr. Smith ordered that no meals be brought to the plaintiff's cell, forcing him to walk a quarter mile to reach the mess hall. Medical staff refused to give him the Motrin that Dr. Smith had prescribed him.

On July 12, 2002, a female correctional officer refused to give the plaintiff a chair for him to use in the shower and refused to mop-up water on the floor surrounding the showers.



The plaintiff slipped on this water after his shower and fell. He injured his hip, back, neck, and re-injured his right ankle.

The plaintiff was taken to the infirmary for this fall. He was treated roughly by Nurse Jim. X-rays were taken only of his back. The plaintiff was sent to an isolation cell without his crutches. When he got back to the cell, the plaintiff asked for assistance in getting to the bathroom because he was in too much pain to do so. The prison staff refused to help him.

Between July 13, 2002 and the time he was transferred to SCI-Albion, the plaintiff alleges numerous other instances of inadequate medical care and the denial and delay of medical care. He also alleges inadequate supervision of staff and retaliatory transfer.

B. Overview of Events at SCI-Albion

On September 24, 2002, Mr. Scantling was transferred from SCI-Graterford to SCI-Albion, in alleged violation of the Department of Corrections' policy that prohibited someone in the plaintiff's condition from being moved to a different facility.

Between October 17 and 28, 2002, the plaintiff complained to the prison staff about his pain. He was seen by the prison nurses, prison doctors, and other prison staff. Generally, he was either given more over-the-counter medications, told to take the medications he had already been given, or told



that he could not have more or stronger medication at that time. Staff doctors ordered him to keep walking on the injured foot.

The plaintiff was eventually referred to outside doctors and was given physical therapy. From December 2002 through January 2003, nursing staff interfered with this therapy, and correctional officers transported him to and from therapy in a rough manner. He also alleges that he was denied basic accommodations by being transferred out of the infirmary during the winter months, forcing him to walk in slippers through the snow to get his meals. On March 27, 2003, an outside podiatrist stated that he should not have been walking on the foot.

C. Overview of the Plaintiff's Use of the Prison Grievance System

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During his time at SCI-Graterford, the plaintiff filed three grievances. The first grievance was about the inadequate medical care he was receiving. The second was about defendant Frace's misconduct and the inadequacy of his medical care, and the third was about prison conditions leading to his slipping and falling.

The first grievance was returned by defendant Hatcher because it exceeded the two-page limit imposed by DOC regulations. This decision was upheld by the prison superintendent, defendant Vaughn. The other grievances were ruled on unfavorably. The grievance reviewers found that the



plaintiff had received medical attention and that the medical and correctional staff had been acting appropriately to the plaintiff's needs. Prison officials upheld these findings on appeal, finding that the staff had been very accommodating to the plaintiff's medical needs. See Letter from Thomas L. James to Lamont Scantling (Nov. 1, 2002) at unnumbered Ex. to Compl.

The plaintiff also filed grievances at SCI-Albion. He appealed the decisions on those grievances, but they were upheld. He alleges that various administrative officials condoned or ratified various violations by upholding negative decisions on his grievances.

## II. Procedural History

The plaintiff filed his original complaint on December 12, 2002. A motion to dismiss and/or sever and transfer the case was filed by defendants Vaughn, Arroyo, Dennis, Hatcher, Knauer, Frace, Wolfe, Marquardt, Kormanic, Overton, Rebele, James, and Kyler on April 2, 2003 (the "initial motion"). The plaintiff responded to the initial motion on April 25, 2003. Defendant Baker filed a separate motion to dismiss or transfer on August 11, 2003. On August 28, 2003, defendant Barr joined in the initial motion to dismiss.

On September 4, 2003, the Court held a telephone conference. After a discussion of the various motions and other



issues, the plaintiff was given 60 days in which to respond in writing to the various motions.

The plaintiff requested and received extensions of time in which to respond to Dr. Baker' motion. In January 2004, the plaintiff filed an amended complaint before any responsive pleading had been filed. The amended complaint adds four defendants, Beard, Burk, Dr. Bashline, and an unknown person who is either the Deputy Superintendent of Management or of Inmate Services at SCI-Graterford, and makes some additional allegations. The amended complaint expressly incorporates the original complaint and its exhibits. At the same time, the plaintiff filed a motion to add those four defendants. He also filed a Motion For Leave to File a Supplemental Complaint.

The moving defendants, except for Dr. Baker, filed an opposition to the Motion For Leave to File a Supplemental Complaint. In that opposition they argue that the amended complaint does not state a claim against two of the newly added defendants, Burk and Beard. The opposition also states: "the additional pleadings do not enhance plaintiff's allegations to the extent necessary to defeat the respective defendants' motion to dismiss which are still pending." The Court shall therefore



take this opposition as a renewal of the initial motion to dismiss.<sup>4</sup>

### III. Involvement of the Moving Defendants

#### A. Jeffrey A. Beard

Beard is the Secretary of the Department of Corrections. The plaintiff alleges that he authored a policy redefining "cruel and unusual punishment" as meaning only the use or threat of excessive force. Beard is also alleged to have failed to implement an intake health care policy that required obtaining outside medical records for chronically or acutely ill prisoners, and to have failed to investigate the plaintiff's claims.

#### B. Leslie S. Hatcher

Hatcher is a Facility Grievance Coordinator at SCI-Graterford. On July 22, 2002, Ms. Hatcher returned the plaintiff's grievance because it exceeded the two-page limit.

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<sup>4</sup> Federal Rule of Civil Procedure 15(a) allows a party to amend a pleading once as a matter of course at any time before a responsive pleading is served. Even when no responsive pleading has been filed, a court may deny leave to file a first amended complaint when examination of the proposed complaint makes clear that the deficiencies of the original pleading are not cured and the amended complaint is doomed not to survive a renewed motion to dismiss. The reasoning behind this is to prevent requiring the expense and delay in forcing the defendants to renew their motion. See Duda v. Bd. of Educ., 133 F.3d 1054, 1057 n.4 (7th Cir. 1998). Treating the opposition as a renewed motion to dismiss serves a similar purpose. The parties have had ample opportunity to address the issues presented.



C. Donald T. Vaughn

Vaughn is the Superintendent at SCI-Graterford. On August 20, 2002, Mr. Vaughn responded to the plaintiff's appeal regarding the two-page limit for grievances. He upheld Hatcher's decision to reject the grievance. Mr. Scantling also alleges he permitted the plaintiff's transfer to SCI-Albion and authored or ratified an unconstitutional policy.

D. Tshanna C. Kyler

Kyler is a Grievance Review Officer for the DOC. On September 3, 2002, Ms. Kyler wrote the plaintiff a letter regarding his appeal of a grievance decision. She told the plaintiff that no action would be taken on his appeal because he had not provided photocopies of his prior filings with respect to that grievance.

E. Donald Frace

Frace is a correctional officer at SCI-Graterford. On July 21, 2002, the plaintiff asked for an appointment to see a doctor. Mr. Frace said that the medical staff did not want to see the plaintiff because there was nothing they could do for the plaintiff. Mr. Frace also told the plaintiff that if he kept complaining he would be "double-locked in." Am. Compl. ¶ 86.

Later that day, two prison staff members took the plaintiff to the infirmary. The nurse in the infirmary told the



plaintiff that the doctor had sent for him earlier, but that Frace had informed medical staff that the plaintiff had refused to see the doctor then.

F. Edward J. Dennis

Dennis is an Institutional Unit Manager at SCI-Graterford. On July 17, 2002, Mr. Dennis told the plaintiff that he had to walk to get his meals. He also told the plaintiff that, pursuant to the doctor's orders, meals would not be brought to him. Mr. Dennis also reviewed the plaintiff's grievance concerning medical care and Frace's misconduct, and concluded that the plaintiff was receiving appropriate medical attention. Mr. Dennis failed to maintain the plumbing adequately, which led to the plaintiff slipping and falling on a puddle of water.

G. Thomas L. James

James is the Chief Grievance Coordinator for the DOC. He did nothing about defendant Hatcher's rejection of Mr. Scantling's grievance because it exceeded the 2-page limit. He also did nothing about defendant Dennis' failure to discipline defendant Frace for the latter's deliberate indifference to the plaintiff.



H. Manuel Arroyo (the Deputy Superintendent of Inmate Services and/or the Deputy Superintendent of Management)

Arroyo is identified as being either the Deputy Superintendent of Inmate Services or the Deputy Superintendent of Management at SCI-Graterford.<sup>5</sup> He is responsible for either the medical staff, as the Superintendent of Inmate Services, or for the guards and unit managers, as the Superintendent of Management.

The Deputy Superintendent of Inmate Services together with others conspired to enact his transfer in spite of his prohibitive medical needs, and in retaliation for his efforts to file this suit against them.

The Deputy Superintendent of Management failed to respond, in any capacity, to the complaints filed by the plaintiff and other SCI-Graterford staff reporting such incidents of misconduct. The plaintiff points to three violations of his rights that he had complained about.

I. Julie Knauer

Knauer is the Health Care Administrator at SCI-Graterford. She is alleged to be the direct supervisor of all medical staff, and the Grievance Officer for initial review of medical grievances. She delayed the initial review of a

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<sup>5</sup> The plaintiff names both Deputy Superintendent positions as defendants.



grievance, permitting the plaintiff to be transferred to SCI-Albion despite his prohibitive medical needs.

J. Victoria L. Kormanic

Kormanic is a Deputy Superintendent at SCI-Albion. Ms. Kormanic was sent a copy of the plaintiff's appeal of a grievance that had been denied. She took no action to remedy the underlying cause of the grievance.

K. William J. Barr

Barr is the Facility Grievance Coordinator at SCI-Albion. On October 21, 2002, the plaintiff filled out an inmate request form regarding the need for better treatment for his pain. He asked Mr. Barr to look into the problems. In his amended complaint, the plaintiff states that Mr. Barr "is not implicated in any claims thus far . . . but has not been dismissed because plaintiff fully expects to implicate him in a supplemental complaint." Am. Compl. ¶ 20.

L. Dr. Baker

Dr. Baker is the Medical Director at SCI-Albion. Dr. Baker failed to prescribe adequate pain medicine to the plaintiff despite having been told of the plaintiff's severe and immobilizing pain. Dr. Baker also ordered the plaintiff to walk on his injured foot.



M. Maxine Overton

Overton is the Health Care Administrator at SCI-Albion. On October 6, 2002, November 4, 2002, and November 11, 2002, the plaintiff sent out Request to Staff Member forms to Ms. Overton. In the October 6, 2002 form, the plaintiff told Ms. Overton that he had serious injuries resulting from a car accident and from a fall at SCI-Graterford. He told Ms. Overton that the injuries were not being looked at seriously enough by staff at SCI-Albion. He asked for the staff to look more closely at his ailments.

In the November 4, 2002 form, the plaintiff stated that he had not received a response to his earlier requests. He complained about the pain and stated that the therapy he was receiving was making his problems worse. He also wanted to know why no other forms of therapy were being considered.

The November 11, 2002 form contained a request from the plaintiff to meet with someone to review his medical records. On November 5, 2002, Ms. Overton saw the plaintiff with Ms. Rebele. The plaintiff said most of his injuries occurred at SCI-Graterford. Ms. Overton told the plaintiff that she would talk to the doctor and try to get the plaintiff an MRI and some outside therapy for the plaintiff. Ms. Overton refused the plaintiff's requests for Prednisone.



N. Sueane Rebele

Rebele is a medical staff member at SCI-Albion. Ms. Kormanic had forwarded one of the plaintiff's inmate request forms to Ms. Rebele. On October 24, 2002, after having first spoken with the plaintiff about his treatment, Ms. Rebele responded in writing to the inmate request. In the letter, Ms. Rebele mentioned that the plaintiff was seen by Dr. Conrad Fraider on October 16, 2002. All of the plaintiff's records were reviewed and Dr. Fraider told the plaintiff his pain was muscular and not skeletal. Ms. Rebele told the plaintiff that a pain management program was being prepared and that a follow up appointment had been scheduled for sometime in November.

O. William Wolfe

Wolfe is the Superintendent for SCI-Albion. He is alleged to be responsible for implementing a health care policy capable of ensuring that the serious medical needs of prisoners can be adequately treated. Mr. Wolfe failed to do so because he did not have a policy mandating retrieval of outside medical records.

P. Bruce T. Marquardt

Marquardt is a Deputy Superintendent at SCI-Albion. He failed to adequately train officers under his command to care for transporting prisoners with serious medical needs. He did



nothing to prevent the transfer of the plaintiff from the infirmary at Albion to the general population.

Q. Sharon Burk

Burk is a Chief Grievance Coordinator. She upheld decisions on two grievances that had been decided against the plaintiff.

IV. Discussion

A. Motions to Dismiss

All the moving defendants argue that the complaint should be dismissed for failure to state a claim against them because there are insufficient allegations of deliberate indifference to support § 1983 liability. The moving defendants also claim that they are immune from suit in their official capacities because of the Eleventh Amendment's grant of sovereign immunity. Dr. Baker also argues that the claims against him should be dismissed because the plaintiff failed to exhaust administrative remedies. The Court will deny Dr. Baker's motion with respect to his exhaustion argument because the plaintiff has alleged that he has exhausted his administrative remedies at SCI-Albion. The Court will discuss below the defendants' arguments that there are insufficient allegations of deliberate indifference and that sovereign immunity bars suit against them in their official capacities.



1. Legal Principles for Medical Care Claims

A § 1983 claim based on an alleged violation of the Eighth Amendment is stated when a prisoner claims that prison officials are deliberately indifferent to his serious medical needs. The Eighth Amendment can be violated by the deliberate indifference of: (1) prison doctors in their response to the prisoner's needs; (2) prison guards intentionally denying or delaying access to medical care; or (3) prison staff intentionally interfering with medical treatment once it is prescribed. Estelle v. Gamble, 429 U.S. 97, 104 (1976).

An Eighth Amendment claim consists of a subjective and an objective component. To satisfy the subjective component, the prison officials must be deliberately indifferent to the inmates serious medical needs. The focus of the subjective component is on whether the defendant acted with a sufficiently culpable state of mind. The objective component requires the medical needs to be serious. The focus is on whether the deprivation of the right to adequate medical care was sufficiently serious. Montgomery v. Pinchak, 294 F.3d 492, 499 (3d Cir. 2002); Rouse v. Allen, 182 F.3d 192, 197 (3d Cir. 1999); Reynolds v. Wagner, 128 F.3d 166, 172 (3d Cir. 1997).

The moving defendants concede for the purposes of the motion to dismiss that the plaintiff's medical needs were



serious. They argue that the plaintiff has not alleged enough facts to show deliberate indifference on their parts.<sup>6</sup>

The deliberate indifference standard focuses on the culpability of the prison official. To be deliberately indifferent, a prison official must know of and disregard an excessive risk to inmate health or safety. See Farmer v. Brennan, 511 U.S. 825, 837-38 (1994). In the medical care context, claims of medical malpractice and disagreements as to the proper course of medical treatment will not satisfy the deliberate indifference standard. Monmouth County Corr. Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987). Courts will not second guess whether a particular course of treatment is adequate or proper. Parham v. Johnson, 126 F.3d 454, 458 n.7 (3d Cir. 1997).

A prison official may be found to be deliberately indifferent when: (1) reasonable requests for medical treatment are denied and the denial exposes the inmate to undue suffering; (2) an official intentionally refuses to provide needed medical care; (3) necessary medical treatment is delayed for non-medical

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<sup>6</sup> To state a cognizable claim regarding medical care, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle, 429 U.S. at 106. A pro se document, however, is to be liberally construed. A pro se complaint is not held to the same stringent standards applied to formal pleadings drafted by lawyers. Such a complaint can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id.



reasons; (4) officials erect arbitrary and burdensome procedures resulting in interminable delays and outright denials of medical care to suffering inmates; (5) prison officials prevent a prisoner from receiving needed or recommended medical treatment; (6) prison officials persist in a particular course of treatment in the face of resultant pain and risk of permanent injury; and (7) prison officials deny a prisoner access to a physician capable of evaluating the need for medical treatment. See Rouse, 182 F.2d at 197; Monmouth County, 834 F.2d at 346-47; Durmer v. O'Carroll, 991 F.2d 64, 68-69 (3d Cir. 1993).

## 2. Application of Legal Principles

Application of the principles discussed above leads to different results for different groups of the defendants. The Court will therefore discuss application of the legal principles for each of these groups.

### a. Medical Staff

It is not beyond doubt that the plaintiff could prove some set of facts that would entitle him to relief with respect to various medical staff who have moved for dismissal. These are defendants Overton, Rebele, and Dr. Baker.

Dr. Baker was made aware of the plaintiff's medical history and knew of the plaintiff's serious medical needs. Dr. Baker's decision to reduce the plaintiff's pain medication and



not to increase it, despite the plaintiff's complaints, could be interpreted as persisting in a particular course of treatment in the face of resultant pain and risk of permanent injury to the plaintiff.

Mr. Scantling makes sufficient allegations to state claims against Overton and Rebele. The plaintiff complained to both of these defendants regarding his pain. Both defendants spoke with the plaintiff. It is possible that the plaintiff's requests were reasonable and denying him the treatment he sought caused undue suffering. It is also possible that these officials were delaying further treatment or different types of treatment for non-medical reasons. The Court shall deny the motion as to these defendants.

b. Non-Medical Staff Directly Involved in Denial  
or Delay of Medical Care

The plaintiff also states a claim against the defendants who had direct contact with him and whom he alleges interfered with his ability to get medical care. Dennis and Frace are among the moving defendants who fall in this group.

Defendant Dennis told the plaintiff that he had to walk to get his meals even though the plaintiff complained about his pain. Mr. Dennis also reviewed one of the plaintiff's grievances and concluded that the plaintiff was receiving appropriate medical attention. From these allegations, the plaintiff may be able to show that Mr. Dennis did not respond to reasonable



requests and the failure to accommodate these requests exposed the plaintiff to undue suffering. It may also be that Mr. Dennis intentionally refused to provide medical care even though he knew the plaintiff needed treatment. Finally, forcing the plaintiff to walk on his injured foot to get his meals may be a denial of medical care for non-medical reasons. The Court cannot say that none of these possibilities, either alone or together, would be sufficient to show deliberate indifference by Mr. Dennis.

The allegations concerning defendant Frace are also sufficient to show deliberate indifference at this stage. The plaintiff's allegations that Mr. Frace kept him from getting needed medical treatment by telling him that the medical staff did not want to see him could support a finding of deliberate indifference.

Mr. Frace argues that even if the plaintiff's allegations are sufficient to show his deliberate indifference, the plaintiff's claims against him are barred by 42 U.S.C. § 1997e(e). Section 1997e(e) prohibits prisoners from recovering from mental or emotional injuries when they do not show that a physical injury was suffered. The plaintiff constantly complained about pain while he was incarcerated and the failure to get him adequate medical care caused further physical injuries. Frace's interference with the plaintiff's medical care could be shown to have aggravated the plaintiff's existing



physical injury. The Court shall deny the motion with respect to these defendants.

c. Non-medical Staff Whose Only Involvement Was  
in the Grievance Process

The defendants whose only contact with the plaintiff involved denying his grievances or upholding such denials on appeal are: Vaughn, Hatcher, James, Knauer, Kyler, and Burk. There are no allegations that would support a finding that any of these defendants were deliberately indifferent. Indeed, there are no allegations that any of them were personally involved in the denial or inadequacy of the plaintiff's medical care.<sup>7</sup> The plaintiff nevertheless alleges supervisory liability on their part.

A supervisor without direct personal involvement may be held liable under § 1983 under certain circumstances, none of which apply here. Personal direction or actual knowledge of the act violating the constitutional right is necessary for supervisory liability. The supervisor must have had knowledge of and acquiesced in his subordinates' violations. Baker v. Monroe Township, 50 F.3d 1186, 1190-91 (3d Cir. 1995). The misconduct

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<sup>7</sup> To be liable under § 1983, "a defendant . . . must have personal involvement in the alleged wrongs." Sutton v. Rasheed, 323 F.3d 236, 249-50 (3d Cir. 2003); see, e.g., C.H. ex rel. Z.H. v. Oliva, 226 F.3d 198, 201-02 (3d Cir. 2000); Robinson v. City of Pittsburgh, 120 F.3d 1286, 1294 (3d Cir. 1997). Liability does not attach in claims involving inadequate medical care on a theory of respondeat superior. Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976).



of the subordinate must be affirmatively linked to the action or inaction of the supervisor. Rizzo v. Goode, 423 U.S. 362, 371 (1976). In the context of medical care claims, prison administrators who are not doctors are not liable for failing to respond to a prisoner's medical complaints where the prisoner is receiving treatment. Durmer v. O'Carroll, 991 F.2d at 69.

These defendants are not doctors, and Mr. Scantling's pleadings show that he has been receiving medical care on a regular and on-going basis. Their failure to respond favorably to the plaintiff's complaints cannot be considered deliberate indifference.

There are also no allegations showing that these defendants knew of Mr. Scantling's constitutional deprivations before they saw his grievances, or that their failure to decide favorably on his grievances affirmatively caused any constitutional violations on the part of the prison staff.<sup>8</sup>

The motion to dismiss shall be granted as to these defendants.

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<sup>8</sup> Vaughn is also alleged to have failed to implement intake health policies that mandate retrieval of outside medical records. Vaughn, Hatcher, and Knauer are alleged to have transferred the plaintiff to SCI-Albion in retaliation for his attempts to file suit. As discussed below, there are insufficient allegations to state these claims.



d. Non-Medical Staff Having Little or No Contact  
With the Plaintiff

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Several defendants had no contact with the plaintiff at all, or merely relayed written requests from the plaintiff to others. These are Beard, Arroyo, the Deputy Superintendent of Management or Inmate Services (depending on which of these Arroyo turns out to be), Wolfe, Marquardt, Kormanic and Barr. There are no factual allegations to support a finding of deliberate indifference on their part. The plaintiff makes conclusory allegations of supervisory liability against most of them.

Kormanic and Barr received requests from the plaintiff informing them of his pain. They passed the requests on to others. They are not alleged to be responsible for addressing the problems therein or in directly reviewing the grievances. The plaintiff himself acknowledges that Barr is not implicated in any claims at this point. Am. Compl., § III, ¶ 20.

Beard is alleged to have enacted an Inmate Abuse Allegation Monitoring policy that excepted claims of inadequate medical or intentionally denied medical care from the definition of "Abuse." There is a general allegation that the policy caused the plaintiff to suffer without protection from a systematic violation of his Eighth Amendment rights. There are no allegations that any of the prison officials who denied him



medical care, or that denied his grievances, did so because of this purported redefinition of "cruel and unusual punishment."<sup>9</sup>

Mr. Wolfe, together with Beard and Vaughn, failed to have a policy mandating retrieval of outside medical records. The plaintiff does not allege that, but for this policy, any of the medical staff would have provided the plaintiff with adequate care. There are no allegations that either Wolfe or Beard had any knowledge of or acquiesced in Dr. Smith's actions or failure to obtain outside medical records.

There is no allegation that Marquardt knew of and acquiesced in the behavior of the correctional officers who roughly transported the plaintiff to see outside doctors. Similarly, the plaintiff makes no factual allegations that the Deputy Superintendent of Management knew of and acquiesced in the actions of his subordinates. Nor are there allegations of a direct causal link between any act or failure to act and the denials of medical care.

The Deputy Superintendent of Inmate Services is alleged to have conspired with defendants Vaughn, Knauer, Hatcher, Smith and some unknown Orthopaedic doctor to transfer the plaintiff in retaliation for his filing grievances and complaining about

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<sup>9</sup> Beard is also alleged to have failed to investigate Mr. Scantling's complaints. Failure to investigate after an alleged constitutional violation is not actionable under § 1983. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988).



inadequate medical care. The plaintiff also fails to allege sufficient facts to support such a claim.<sup>10</sup>

The motion to dismiss shall be granted with respect to these defendants.

### 3. Sovereign Immunity

The moving defendants argue that they cannot be sued in their official capacities because of sovereign immunity.

Suits against states are barred by the Eleventh Amendment's grant of sovereign immunity. Koslow v. Pennsylvania, 302 F.3d 161, 167-68 (3d Cir. 2002). State agencies, such as the Department of Corrections, SCI-Graterford, and SCI-Albion, enjoy the same level of immunity as the state. See Cloverland-Green Spring Dairies, Inc. v. Pennsylvania Milk Mktg. Bd., 298 F.3d 201, 205 n.2 (3d Cir. 2002). A suit against an individual in the individual's official capacity is treated as a suit against the agency for whom the individual works. Sovereign immunity is, therefore, a

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<sup>10</sup> A prisoner-plaintiff must prove three things to establish a retaliation claim: (1) the conduct leading to the alleged retaliation was constitutionally protected; (2) the action was sufficient to deter a person of ordinary firmness from exercising his right; and (3) there must be a causal link between his exercise of the right and the imposition of the alleged retaliation. Rauser v. Horn, 241 F.3d 330, 333 (3d Cir. 2001).

The plaintiff has not sufficiently alleged each of these elements.



valid defense to an official capacity suit. Kentucky v. Graham, 473 U.S. 159, 165-67 (1984).<sup>11</sup>

Sovereign immunity does not apply when a plaintiff sues for purely prospective relief against state officials for ongoing violations of federal law. Koslow, 302 F.3d at 168; see Ex parte Young, 209 U.S. 123 (1908). The motion is therefore denied to the extent the plaintiff seeks such prospective relief against defendants in their official capacity. The motion is granted to the extent that the plaintiff seeks damages from remaining defendants in their official capacities.

B. Motion to Transfer

The moving defendants from SCI-Albion ask that the claims against them be severed or transferred.<sup>12</sup> The Court will not grant severance. SCI-Graterford defendants (Frace, Dennis, Dr. Smith, Nurse Jim, and the unknown female correctional officer) and SCI-Albion defendants (Overton, Rebele, Bashline, Fraider, and Baker) remain in the case. Severing the defendants would force Mr. Scantling, who is incarcerated and proceeding pro

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<sup>11</sup> There are two notable exceptions to Eleventh Amendment Immunity - waiver by Congress and consent by a state - neither of which apply here. See Koslow, 302 F.3d at 168.

<sup>12</sup> Defendants Wolfe, Marquardt, Kormanic, and Barr also move for a transfer of the claims against them, but the motion is moot with respect to these defendants because the plaintiff has failed to state a claim against them. The only SCI-Albion defendants who have not moved for severance are Dr. Fraider, who has not been served, and Dr. Bashline who is a recently added defendant.



se, to litigate many of the same facts in two separate cases and, perhaps, forums.

The remaining issue then is whether or not the entire case should be transferred to the Western District. Under 28 U.S.C. § 1404(a), a district court may transfer a civil action to any other district where it might have been brought "for the convenience of the parties and witnesses." The party requesting the transfer has the burden of establishing that transfer is warranted. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995).

The Court must consider private and public interests to determine in which forum the interests of justice and convenience would be best served. Private factors of relevance here include: (1) the plaintiff's choice of venue; (2) the defendants' preference; (3) where the claim arose; (4) the relative physical and financial condition of the parties; (5) the extent to which witnesses may be unavailable for trial in one of the forums; and (6) the extent to which books and records would not be produced in one of the forums. Id. at 879.

For the purposes of this motion, the relevant public factors are: (1) practical considerations that could make the trial easy, expeditious, or inexpensive; (2) the relative administrative difficulty resulting from court congestion; (3) the local interest in deciding the controversy; and (4) the public policies of the forums. Id.



The first private factor weighs heavily in favor of the plaintiff. A plaintiff's choice of forum should not be disturbed lightly. Id. It is entitled to less weight only in cases where few of the operative facts took place in the forum and the defendants have indicated a strong preference for another district. See Gallant v. Trustees of Columbia Univ., 111 F. Supp. 2d 638, 646-47 (E.D. Pa. 2000); 17 James Wm. Moore, et al., Moore's Federal Practice, § 111.13[1][c][iii] (3d ed. 2000). Many of the operative facts took place at SCI-Graterford. The medical care problems at SCI-Albion are intertwined with, and arguably in part arise from the medical care problems at SCI-Graterford.

The other private factors do not shift the balance in favor of transfer. Although the defendants' preference favors transfer somewhat, private factor three, where the claim arose, favors keeping the case here. Private factor four favors the plaintiff. None of the defendants has identified any limiting physical or financial factors that make litigating this case in the Eastern District any more inconvenient than it would be for the plaintiff to litigate it in the Western District. Private factor five is neutral. There are at least as many remaining SCI-Graterford defendants as there are SCI-Albion defendants. Private factor six is neutral. The plaintiff's medical records are at SCI-Albion; however, the issue for factor six is whether the records can be produced in the Eastern District. See Jumara,



55 F.3d at 879. There is no apparent reason why such records cannot be produced here.

The relevant public factors do not support transfer either. Different sets of key witnesses would have to travel long distances in either forum; no evidence has been presented that there are differences in court congestion between the forums sufficiently great enough to matter; each venue has some interest in the controversy; and there has been no showing of a difference in public policies between the two venues. The Court will therefore deny the motion to transfer.

C. Motion For Leave to File Supplemental Complaint

The Court will deny the plaintiff's Motion for Leave to File a Supplemental Complaint at this time. The motion was only two pages long and did not include enough specific information. It did not name any of the defendants the plaintiff sought to sue or the allegations that he would make against them.

D. Motion to Add Defendants

The amended complaint fails to state a claim against three of the defendants the plaintiff sought to add: Beard, Burke, and the Deputy Superintendent of Inmate Services or Management. The plaintiff's motion to add these defendants is



therefore denied. The Court will allow the plaintiff to add Dr. Bashline, without prejudging the allegations against Dr. Bashline.

An appropriate Order follows.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAMONT SCANTLING,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
DONALD T. VAUGHN,	:	
et al.,	:	
Defendants	:	NO. 03-0067

ORDER

AND NOW, this \_\_\_\_ day of February, 2004, upon consideration of the defendants Vaughn, Arroyo, Dennis, Hatcher, Knauer, Frace, Wolfe, Marquardt, Kormanic, Overton, Rebele, James and Kyler's Motion to Dismiss or Transfer (**Docket No. 11**); Defendant Baker's Motion to Dismiss or Transfer (**Docket No. 18**); Defendant Barr's Motion to Dismiss or Transfer (**Docket No. 20**); Plaintiff's Motion to For Leave to File a Supplemental Complaint (**Docket No. 36**); and Plaintiff's Motion to Add Defendants (**Docket No. 37**); and the responses thereto, IT IS HEREBY ORDERED that Vaughn, Arroyo, Dennis, Hatcher, Knauer, Frace, Wolfe, Marquardt, Kormanic, Overton, Rebele, James and Kyler's Motion to Dismiss or Transfer is GRANTED in part and DENIED in part; Barr's Motion to Dismiss is GRANTED; Baker's Motion to Dismiss or Transfer is DENIED; the Plaintiff's Motion For Leave to File a Supplemental Complaint is DENIED; and the Plaintiff's Motion to Add Defendants is DENIED in part and GRANTED in part.



IT IS FURTHER ORDERED that:

1. The following moving defendants are dismissed from this case: Vaughn, Arroyo, Hatcher, Knauer, Wolfe, Marquardt, Kormanic, James, Kyler, Barr, Burk, Beard, and the Deputy Superintendent of Management and/or the Deputy Superintendent of Inmate Services of SCI-Graterford;

2. The following moving defendants are not dismissed from this case: Dennis, Frace, Overton, Rebele, and Baker. These defendants may be sued for damages only in their individual capacities; but may be sued in their official capacities to the extent that the plaintiff seeks purely prospective relief against them.

3. The plaintiff may not add Beard, Burk, and the Deputy Superintendent of Inmate Services or Management at SCI-Graterford as defendants. The plaintiff may add Dr. Bashline as a defendant in this case.

4. The case shall not be severed and shall not be transferred.

BY THE COURT:

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MARY A. McLAUGHLIN, J.